

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1328 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NIZAMMUDIN SAJIDALI PATHAN

Versus

MUNICIPAL CORPORATION

Appearance:

MR EE SAIYED for Petitioner
MR PRASHANT G DESAI for the Respondent.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE B.C.PATEL

Date of decision:30/03/2000

C.A.V. JUDGEMENT:(Per D.M. Dharmadhikari, C.J.)

1. The petitioner, who styles himself as 'President'
of Shahin Welfare Society, which, admittedly, is not a

registered body, has filed this petition by way of public interest litigation to restrain the Municipal Corporation, Surat, from forcibly evicting about 570 hutment dwellers with their families in Sanjaynagar. The petition has been filed on the ground that the civic and Corporation authorities of Surat cannot deprive the hutment dwellers of their right of life and livelihood without they being provided with alternative sites, with all civic amenities for a reasonably comfortable living.

2. On a notice being issued to the Municipal Corporation, an affidavit has been filed on merits as also raising a plea of locus standi of the petitioner to represent the cause and interests of the hutment dwellers. On behalf of the Corporation, it is stated that about 570 hutments, with their inmates, have been duly identified by making a survey and taking their photographs and giving them identity cards. The Corporation has given all the hutment dwellers sufficient notice, requiring them to vacate the land, on which they were, admittedly, encroachers. The Corporation proposes to peacefully evict them and settle them on a land in Town Planning Scheme No.1, Final Plot Nos. 81 and 82, which is said to be an area in Panchsheelnagar. The relevant part of the affidavit filed on behalf of the Municipal Corporation, Surat, reads as under :-

"... 6. I submit that there are about 570 hutments which are situated in Survey No.96, O.P. No.39/1. I submit that out of the said O.P.No.39/1 some portion was carved out as road and some portion was carved out as open space. I submit that 570 hutment dwellers are situated on the portion which is carved out from the road and open space being Final Plot No.144 which is known as "Sanjay Nagar".

7. I submit that all the 570 hutments are occupying the portion of the land which is of the ownership of the Corporation without any authority or licence and they are unauthorised occupants on a public street as well as open space. I submit that the town planning Scheme No.8 (Umarvada) was sanctioned in the year 1988. I submit that thereafter the Corporation has proposed variation in the town planning Scheme No.8 by which the road was shifted, however, final plot Nos. 143 and 144 were of the ownership of the Surat Municipal

Corporation and hutments are situated on a land belonging to the Corporation.

8. I submit that the Corporation decided to give final plot Nos. 143 and 144 for development and therefore the advertisements were issued and the tenders were invited for developing the land of Final Plot Nos. 143 and 144 and the Corporation has received the offer of Rs.180 Crores, out of which the half of the amount has already been received by the Corporation. I submit that the corporation is duty bound to give vacant and peaceful possession of the land of both the final plots.

9. I submit that on Final Plot No.143 the transport godown is situated within (sic) is required to be shifted and for that the Corporation has made arrangement to shift the transport godown at Magob. I submit that so far as hutment dwellers are concerned, out of 570 hutment dwellers the Corporation has decided to shift 300 hutments from town planning Scheme No.8 to Town Planning Scheme No.1 on final plot Nos. 81 and 82. For that purpose, the Corporation has carved out the plots and decided to give the plots to hutment dwellers. I submit that the Corporation has laid down the road and also the street light. I submit that the Corporation has also constructed Pay & Use toilets and the stand post for water. I submit that the Corporation has, before about one year, made survey of all the hutments and took photographs of the land and informed them that they will be shifted to town planning scheme No.1. I submit that the Corporation has also started construction of Pay & Use Toilets and stand post and thereby the Corporation has spent about Rs.1 Crore for providing alternative site to the hutment dwellers so that they can construct their huts and start staying there.

10. I submit that all the hutment dwellers were in know of the fact that they were required to be shifted to final plot Nos. 81 and 82 of the town planning Scheme

No.1 of the Corporation situated at Panchshil Nagar. I submit that in that area, there are industries situated and Industrial societies are also situated. I submit that the Corporation has also made arrangement of transportation for shifting the said hutment dwellers. I annex herewith as Annexure : I photographs showing the site at which the hutments are to be shifted "

3. The learned counsel appearing for the petitioner has filed a counter affidavit, stating that the hutment dwellers presently in Sanjaynagar are not welcome in Panchsheelnagar as the residents of the latter locality are opposing their resettlement. In the counter affidavit filed on behalf of the hutment dwellers, it is submitted that the place earmarked for settlement of the hutment dwellers is not congenial.

4. As has been stated on behalf of the Corporation, the hutment dwellers, who are living on an encroached piece of land, cannot be allowed to continue there indefinitely to cause impediment in the Town Planning Scheme of the Corporation. The hutment dwellers, in exercise of their right of life and livelihood, can only insist that they have a right of resettlement at an alternative site. They have also a legitimate right to insist that they should not be forcibly evicted without giving them a reasonable period on advance notice to vacate the land peacefully. The hutment dwellers, however, cannot be given a choice with regard to their resettlement.

5. On behalf of the Corporation, an assurance has been given that against the hutment dwellers, no force will be used and they will be provided with all facilities of transport to shift to the proposed site. In the course of hearing, we had specifically directed the Corporation authorities not to use any physical force or bulldozer for demolition of the hutments. As has been stated on behalf of the Corporation on affidavit, we find no justification for the hutment dwellers of Sanjaynagar not to shift to the proposed site in Panchsheelnagar locality regardless of the fact that some unidentified persons of Panchsheelnagar are objecting to their resettlement.

6. In the circumstances, we dispose of this petition, with the following directions :-

(1) That the Corporation authorities, after due identification of 570 hutments and the inmates of those hutments, would provide the hutment dwellers reasonable time of 15 days to shift to the alternative site and provide them necessary facilities of transport of their children and belongings. At the place earmarked for resettlement, the Corporation shall provide the minimum required civic amenities, such as drinking water, sanitation and toilet facilities;

(2) The Corporation and its authorities shall not use physical force or bulldozer for evicting the hutment dwellers, if they agree to vacate peacefully within the period of 15 days from the date of service of notice on them. The Corporation would, however, be at liberty to resort to coercive measures as may be available to them under law to evict the hutment dwellers in case, despite notice, they refuse or avoid to vacate. Before taking the coercive action, provisions of the Bombay Provincial Municipal Corporations Act shall be duly followed, if not already followed.

A n d

(3) The Commissioner of Police, Surat is directed to provide Police protection to the hutment dwellers at the time of their shifting and for reasonable period after their resettlement.

7. Since there is doubt about the locus standi of the petitioner to champion the cause of the hutment dwellers, we make no order as to costs.

8. This Special Civil Application stands disposed of accordingly, with the aforesaid directions.

March 30, 2000 (D.M. Dharmadhikari, C.J.)

(B.C. Patel, J.)

Immediately after the pronouncement of the judgment, learned counsel for the petitioner made an oral

prayer for stay of the judgment for four weeks to enable the petitioner to approach the Supreme Court. In our opinion, the said prayer cannot be acceded to. The prayer is, therefore, rejected.

March 30, 2000 (D.M. Dharmadhikari, C.J.)

(B.C. Patel, J.)

(apj)